

# PAUL HASTINGS

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April 19, 2023

## VIA ECF AND E-MAIL

Hon. Katherine Polk Failla, U.S.D.J.  
United States District Court  
Southern District of New York  
40 Foley Square, Room 2103  
New York, New York 10007

**MEMO ENDORSED**

Re: *Network Apps, LLC et al. v. AT&T Inc. et al.*, Civ. No. 21-cv-00718-KPF  
Motion to Seal Defendants' Opposition to Plaintiffs' Motion for Reconsideration

Dear Judge Failla:

On March 22, 2023, the Court granted in part and denied in part the motion to dismiss filed by Defendants AT&T Mobility LLC and AT&T Services, Inc.'s (collectively, "AT&T"). Dkt. 155. On April 5, Plaintiffs filed a motion for reconsideration of the Court's March 22, 2023 order. Dkt. 158. On April 10, the Court directed AT&T to submit its opposition to Plaintiffs' motion for reconsideration by April 19. Dkt. 159. Pursuant to Section 9(C) of this Court's Individual Rules of Practice, AT&T submits this letter motion for leave to file under seal identified portions of its opposition to Plaintiffs' motion for reconsideration.

On June 24, 2022, AT&T filed a motion to seal identified portions of the opening brief in support of its motion to dismiss along with supporting documents. Dkt. 129. On June 27, the Court granted AT&T's sealing motion. Dkt. 136. On July 25, Plaintiffs filed a similar motion to seal identified portions of their opposition to AT&T's motion to dismiss and supporting documents. Dkt. 137. On July 26, the Court granted Plaintiffs' sealing motion. Dkt. 144. The information and documents that were the subject of the parties' sealing motions pertain to proprietary and confidential technical and business information of Plaintiffs, AT&T, and/or third parties who engaged in a business relationship with Plaintiffs, most of which were designated "confidential" or "highly confidential" by the producing party pursuant to the Stipulated Protective Order at Dkt. 128.

The Second Circuit follows a three-step inquiry for evaluating sealing requests. See *Lugosch v. Pyramid Co. of Onondaga*, 435 F.3d 110, 119–20 (2d Cir. 2006). First, the court looks to whether the document at issue is a "judicial document" that is "relevant to the performance of the judicial function and useful in the judicial process." *Id.* at 119 (quoting *United States v. Amodeo*, 44 F.3d 141, 145 (2d Cir. 1995) ("*Amodeo I*"). Second, the court determines the weight of the presumption in favor of public access, given "the role of the material at issue in the exercise of Article III judicial power." *Id.* (quoting *United States v. Amodeo*, 71 F.3d 1044, 1049 (2d Cir. 1995) ("*Amodeo II*"). Finally, the court determines whether the party moving to seal has demonstrated that the presumption of public access is overcome by the need to protect "higher values." *Id.* at 120.

In granting the parties' previous sealing motions, this Court necessarily concluded that the factors weighing against public disclosure of the information outweighed the public's interest in monitoring the courts, which can only be achieved by open records and open courtrooms. Nothing about the sensitivity of the information has changed in the time since the Court granted the parties' previous motions to seal. The

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information contained in the documents has not been publicly disclosed and the brief passage of time has not lessened the sensitivity of the information.

For these reasons, and the reasons explained in AT&T's previous sealing motions, Dkts. 129, 145, and 151, AT&T seeks the Court's permission to file under seal identified portions of AT&T's opposition to Plaintiffs' motion for reconsideration.

Respectfully submitted,

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*Attorney for Defendants*

cc: All Counsel of Record (via ECF)

Application GRANTED. The Clerk of Court is directed to terminate the pending motion at docket number 160.

Dated: April 20, 2023  
New York, New York

SO ORDERED.



HON. KATHERINE POLK FAILLA  
UNITED STATES DISTRICT JUDGE